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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/431,636	11/01/1999	KEVIN MARK MCFARLAND	29193-PA	9011

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BERNHARD KRETEN, ESQ. & ASSOCIATES  
300 CAPITAL MALL  
SUITE 1100  
SACRAMENTO, CA 95814

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 09/24/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/431,636

Applicant(s)  
Kevin Mark McFarland

Examiner  
Ahmed M. Farah

Art Unit  
3739



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 2, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 9, and 17 is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-16, and 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9, 13-16, and 18-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is an improper Markush claim. The claim recites ‘a tanning bed comprising in combination plurality of discrete modules selected from the group including...” This is an improper Markush statement and therefor renders the claim indefinite.

Claims 1-9 and 13-16 recite “means integral with said components...For assembling,” and claims 18-29 recite “means for assembling.” It is not clear from the written description as what the applicant considers said means. It is not clear to the examiner whether the applicants want to invoke the 35 U.S.C. 112, sixth paragraph.

When it is not clear whether a claim limitation should be treated under 35 U.S.C. 112, sixth paragraph, determining the patentability of that claim is difficult because the scope of the claim and the relevance of the prior art cannot be readily determined. Applicants have an opportunity and obligation to define their inventions precisely during proceedings before the U.S.

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PTO. They are required to specify their inventions, consistent with the guidelines described in MPEP 2181, when a claim limitation invokes 35 U.S.C. 112, sixth paragraph.

A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for";
- (B) the "means for" or "step for" must be modified by functional language; and
- © the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.

**If the applicants wish to have the claim limitations under 112, sixth paragraph interpretation, they must:**

**show why the claim language properly invokes 35 U.S.C. 112, sixth paragraph;**

**identify the function; and**

**identify the corresponding structure.**

They must either: (A) amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines; or (B) show that even though the phrase "means for" or "step for" is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 U.S.C. 112 , sixth paragraph. See *Watts v. XL Systems, Inc.*, 232 F.3d 877, 56 USPQ2d 1836 (Fed. Cir. 2000).

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The examiner suggests that the specification to be amended to explicitly state what structure correspond to the recited function with reference to the claimed terms and phrases, provided no new matter is introduced.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, 20, and 24-29 are again rejected under 35 U.S.C. 102(b) as being anticipated by Brown U. S. Pat. No. 5,383,916.

Brown discloses a tanning bed system comprising a plurality of modules collectively defining components of said tanning bed and a knock-down coupling means for assembling said components into an operational tanning bed, as claimed. Further, Brown's system includes canopy 12 provided with illumination means for tanning, a pair of spaced bench supports 11, removable unit 13 disposed between said bench supports, and fan 56 for providing cool air into the system. Brown further teaches that the fan is oriented to draw air into the tanning bed and out to one or more vents in order to transfer heat away from the tanning bed. In addition, he teaches that unit 13, which houses a various electrical components is designed to be readily removed and sent to be serviced independent of the tanning bed.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-7 and 13-16 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Brown U. S. Pat. No. 5,383,916. in view of Kramer et al. U. S. Pat. No. 4,600,009.

Brown has been described above. However, although he discloses a removable unit disposed between his bench supports, he does not teach that said unit is a ballast housing. Kramer et al. discloses an alternative UV tanning bed comprising an L-shaped bench supports and ballasts, 32, disposed between said bench supports. Thus, it would have been obvious to one having the ordinary skill in the art at the time of the applicant's invention to modify Brown with Kramer to provide removable ballasts disposed between the bench supports in order to provide an easy to maintain, user friendly system.

7. Claims 10-12, 18, 19, and 21-23 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of the Montego Bay brochure (3200 Legend).

Brown, described above, does not show bench support being received on hook support or within a complementally formed slits. However, Montego Bay brochure discloses an alternative tanning bed in which the top portion of the bed is supported by a hook, which allows the top portion to ark as it opens. Thus, it would have been obvious to one skilled in the art to use hook

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as an equivalent alternative bed support in order to provide a support to the top portion during while the bed is open.

***Allowable Subject Matter***

8. Claims 8, 9, and 17 are allowed.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Farah whose telephone number is (703) 305-5787. If attempts to reach

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the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Linda Dvorak, can be reached on (703) 308-0994. The fax number for the Examiner is (703) 746-3368.

**A. M. Farah (AU 3739)**

**Primary Patent Examiner**

**Patent Examiner**



September 19, 2003



MICHAEL PEFFLEY  
PRIMARY EXAMINER